

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 1/3/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAUL BIGUVU,	:	
	:	
Plaintiff,	:	
	:	1:23-cv-6026-GHW
-against-	:	
	:	<u>ORDER</u>
JP MORGAN CHASE & CO.,	:	
	:	
Defendant.:	:	
-----X	:	

GREGORY H. WOODS, United States District Judge:

Plaintiff's complaint was filed on July 12, 2023. Dkt. No. 1. A summons was issued on September 11, 2023. Dkt. No. 7. Federal Rule of Civil Procedure 4(m) states, in relevant part, that "[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." On September 7, 2023, the Court directed the plaintiff "to serve the summons and complaint on Defendant within 90 days of the issuance of the summons." Dkt. No. 4. The Court added that "[i]f within those 90 days, Plaintiff has not either served Defendant or requested an extension of time to do so, the Court may dismiss the claims against Defendant under Rules 4 and 41 of the Federal Rules of Civil Procedure for failure to prosecute." *Id.* As the summons was issued on September 11, 2023, the ninety-day window for service closed on December 10, 2023.

On December 15, 2023, Plaintiff was ordered to show cause by December 22, 2023 as to why this action should not be dismissed for failure to serve process in the time allotted by Federal

Rule of Civil Procedure 4(m). Dkt. No. 10. As of the date of this Order, there remains no indication on the docket that the Defendant has been served. Nor has the defendant appeared.

On December 21, 2023, Mr. Biguvu emailed the Southern District's Pro Se Filing Office and Docketing Services, responding to the Court's December 15, 2023 order to show cause. *See* Dkt. No. 11. In this email, Mr. Biguvu stated his mistaken belief that the United States Marshal Service would serve Defendant on his behalf. *See id.* In addition, Mr. Biguvu requested an additional four weeks, during which time it appears he intends to serve Defendant and/or secure representation to assist him in doing so. *See* Dkt. No. 11. While Federal Rule of Civil Procedure 4(m) imposes a 90-day limit on serving defendants, "if the plaintiff shows good cause for failure, the court must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m). "Good cause" for the failure to timely serve "is generally found only in exceptional circumstances where the plaintiff's failure to serve process in a timely manner was the result of circumstances beyond its control." *Beauvoir v. U.S. Secret Serv.*, 234 F.R.D. 55, 56 (E.D.N.Y. 2006) (cleaned up); *accord Vaher v. Town of Orangetown*, 916 F. Supp. 2d 404, 419 (S.D.N.Y. 2013). "[A] district court *may* grant an extension in the absence of good cause, but it is not required to do so." *Zapata v. City of New York*, 502 F.3d 192, 197 (2d Cir. 2007) (emphasis in original).

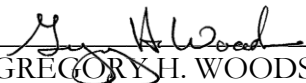
In this case, the Court finds that an extension is warranted. Mr. Biguvu is proceeding pro se and has requested a reasonable extension based on a misunderstanding of service under the Federal Rules of Civil Procedure. He has affirmatively communicated his intent to prosecute this case and to obtain representation to assist him with serving the defendant. *See* Dkt. No. 11. Accordingly, Mr. Biguvu's request for an extension is granted. Mr. Biguvu must effectuate service on Defendant by no later than January 31, 2024. Further, Mr. Biguvu is directed to submit any future correspondence

to the Court either as a hard copy via the mail, or as a PDF attachment via email, rather than in the body of an email.

The Clerk of Court is directed to mail a copy of this order to Plaintiff by first class and certified mail.

SO ORDERED.

Dated: January 3, 2024
New York, New York


GREGORY H. WOODS
United States District Judge